
Judiciary Committee

HB 2173

Title: An act relating to service members' civil relief.

Brief Description: Adopting the service members' civil relief act.

Sponsors: Representatives Serben, Lantz, Curtis, Darneille, Williams, Rodne, Ahern, Sump, Sells, Woods, Dunn, Springer, Haler, Talcott, Wallace, Conway, O'Brien, Kenney and P. Sullivan.

Brief Summary of Bill
<ul style="list-style-type: none">Establishes the Washington Service Members' Civil Relief Act to provide certain rights and protections in civil proceedings to service members during their military service or within 180 days after the termination of their military service.

Hearing Date: 3/1/05

Staff: Edie Adams (786-7180).

Background:

The federal Servicemember's Civil Relief Act (SCRA) provides a number of protections to military personnel while on active duty. The SCRA was adopted by Congress in 2003, and is a revision to the Soldiers' and Sailors' Civil Relief Act of 1940. The SCRA applies to all judicial and administrative proceedings in any federal or state court or agency. It does not apply to criminal proceedings.

The SCRA contains numerous protections for service members whose financial and legal obligations may be adversely impacted by active military duty. These protections include, among others: protecting service members from foreclosures on property under a mortgage or deed of trust; reducing interest rate obligations on pre-service loans to 6 percent; and restricting the ability of a landlord to evict the service member's family for non-payment of rent in certain situations.

In addition, the SCRA protects service members from adverse actions in civil proceedings by protecting against default judgments and by staying court proceedings if the service member is unable to defend his or her interests in the proceeding.

Default Judgments

A court may not enter a judgment against an absent defendant until the plaintiff has filed an affidavit stating whether the defendant is in military service. If it appears that the defendant is in

military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant.

The court must grant a stay of proceedings for a minimum of 90 days if the court finds there may be a defense to the action that cannot be raised without the service member's presence, or counsel has been unable to contact the service member to determine whether there is a valid defense.

A default judgment against a service member while the member is in military service, or within 60 days after termination of military service, may be reopened upon application of the service member to allow the service member to defend the action if:

- the military service materially affected the ability to raise a defense;
- there is a meritorious defense to the action; and
- the application to reopen the judgment is filed no later than 90 days after the date of termination or release from military service.

Stay of Civil Proceedings

A service member whose military service materially affects his or her ability to appear at a civil proceeding and who is unable to receive military leave to appear at the proceeding is entitled to an automatic stay of the proceedings for a period of at least 90 days. The service member may apply for an additional stay if military service continues to materially affect the service member's ability to appear. If a court refuses to grant the additional stay, the court must appoint counsel to represent the service member.

Contract Fines and Penalties

A court may reduce or waive a penalty that accrues under a contract for nonperformance by a service member if the service member was in military service when the penalty was incurred and the military service materially affected the service member's ability to perform the contract obligation.

A penalty for noncompliance with a contract may not accrue if an action for compliance with the contract has been stayed under the SCRA.

Statutes of Limitations

The period of a service member's military service is excluded from the calculation of any time periods set forth in laws or regulations that define when an action or proceeding may be brought by or against a service member or the service member's heirs, executors, administrators, or assigns. This provision does not apply to limitations periods in the federal internal revenue laws.

Summary of Bill:

The Washington Service Members' Civil Relief Act (Act) is established to provide certain rights and protections to service members during their military service or within 180 days after the termination of their military service, including the ability to stay civil proceedings and protect against default judgments. The Act applies to all judicial and administrative proceedings, but does not apply to criminal proceedings.

"Service member" means any member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or a military reserve component. "Military service" means: (1) full-time

duty in the active military service in the case of a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard; and (2) service under a call to service for a period of more than 30 consecutive days in the case of a member of the National Guard or military reserve.

Default Judgments

In a civil action where a defendant does not make an appearance, the plaintiff must file an affidavit stating whether the defendant is in military service or stating that the plaintiff is unable to determine whether the defendant is in military service. A person who makes or uses such an affidavit knowing that it is false is guilty of a class C felony.

If it appears that an absent defendant is in military service, the court may not enter a judgment against the defendant until after the court appoints an attorney to represent the defendant. The actions of the attorney are not binding on the service member if the attorney is unable to locate the service member.

In a civil action where a service member is a defendant and does not make an appearance, the court must grant a stay of proceedings until 180 days after termination of or release from military service if the court finds:

- there may be a defense to the action that cannot be raised without the defendant's presence; or
- counsel has been unable to contact the defendant to determine whether there is a valid defense.

If a default judgment is entered against a service member while the service member is in military service or 180 days after termination or release from military service, the service member is entitled to have the judgment reopened to allow the service member to defend the action if the service member:

- was materially affected in making a defense because of the military service; and
- has a meritorious or legal defense to the action or some part of the action.

Any default judgment that is vacated or set aside under this provision does not impair a right or title acquired by a bona fide purchaser for value.

Stay of Proceedings

A service member may apply for a stay of a civil proceeding in which the member is a defendant during military service or within 180 days after the termination of military service. The court must stay the proceedings until 180 days after termination of military service if the application contains:

- a description of how the military service requirements materially affect the service member's ability to appear and a date when the member will be able to appear;
- a letter from a commanding officer stating that the member's military duty prevents his or her appearance and that military leave is not authorized at the time.

A service member may apply for an additional stay based on continuing material impact of military duty on the service member's ability to appear. If the court refuses to grant an additional stay, the court must appoint counsel to represent the service member in the action.

Contract Fines or Penalties

A court may reduce or waive a penalty that accrues under a contract for nonperformance by a service member if the service member was in military service when the penalty was incurred and the military service materially affected the service member's ability to perform the contract obligation.

A penalty for noncompliance with a contract may not accrue if an action for compliance with the contract has been stayed under the Act.

Statutes of Limitations

The period of a service member's military service is excluded from the calculation of any time periods set forth in laws or regulations that define when an action or proceeding may be brought by or against a service member or the service member's heirs, executors, administrators, or assigns. This provision does not apply to limitations periods in the federal internal revenue laws.

Secondarily Liable Parties

Any relief granted to a service member under the Act may also be granted to any other person who may be primarily or secondarily liable upon the obligation at issue, such as a surety, guarantor, or endorser.

Appropriation: None.

Fiscal Note: Requested on February 22, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.